

**State of Maine**  
**Board of Licensure in Medicine**  
**137 SHS 161 Capitol Street**  
**Augusta, Maine 04333-0137**  
**Minutes of May 8, 2012**  
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**State of Maine  
Board of Licensure in Medicine  
137 SHS 161 Capitol Street  
Augusta, Maine 04333-0137  
Minutes of May 8, 2012**

**BOARD MEMBERS PRESENT**

Gary R. Hatfield, M.D., M.D., Chairman  
Maroulla Gleaton, M.D., Board Secretary  
David R. Andrews, M.D.  
David H. Dumont, M.D.  
Dana Dye  
David D. Jones, M.D.  
David Nyberg, Ph.D.

**BOARD STAFF PRESENT**

Randal C. Manning, Executive Director  
Jean M. Greenwood, Board Coordinator  
Dan Sprague, Assistant Executive Director  
Tim Terranova, Consumer Assistant  
Maria MacDonald, Board Investigator  
**ATTORNEY GENERAL'S OFFICE**  
Dennis Smith, Assistant Attorney General  
Detective James Gioia

Dr. Barnhart and Ms. Clukey were excused

The Board meets in public session with the exception of the times listed below, which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S. §405) and 10 M.R.S.A. §8003-B, and 22 M.R.S. § 1711-C). The Board moved, seconded, and voted the following executive session times. During the public session portions of the meeting actions are taken on all matters discussed during executive session. Discussions are projected on a screen by PowerPoint projection.

**PUBLIC SESSIONS**

9:07 a.m. – 9:08 a.m.	Call to order
11:02 a.m. – 11:20 a.m.	Recess
11:20 a.m. – 11:21 a.m.	Back in Session
11:45 a.m. – 12:13 p.m.	Public Session
12:13 p.m. – 12:45 p.m.	Recess
12:45 p.m. – 1:09 p.m.	Public Session
2:12 p.m. – 3:51 p.m.	Public Session

**PURPOSE**

**EXECUTIVE SESSION**

9:08 a.m. – 11:02 a.m.	Complaints
11:21 a.m. – 11:45 a.m.	Complaints
1:09 p.m. – 2:12 p.m.	Informal Conference

I. Call to Order - Dr. Hatfield called the meeting to order at 9:22 a.m.

A. Amendments to Agenda

Complaints

1. CR 12-10
2. CR 12-35

Consent Agreements

1. CR 11-397 Stephen Doane, M.D.
2. CR 11-508 Ruth O'Mahony, M.D.

3. CR 10-603 Charles M. Stewart, M.D.

B. Scheduled Agenda Items

1. 12:30 p.m. Adjudicatory Hearing – CR 10-476 Cesar O. Garcia, M.D.
2. 1:00 p.m. Informal Conference CR 11-318

II. Complaints

1. Review Draft Letters of Guidance

- a. CR 09-441 Ryan Herrington, M.D.

Dr. Dumont moved to approve the letter of guidance to Dr. Harrington as written. Dr. Jones seconded the motion, which passed unanimously.

- b. CR 10-480 Judy Welch, M.D.

Dr. Hatfield moved to approve the letter of guidance to Dr. Welch as written. Dr. Gleaton seconded the motion, which passed unanimously.

- c. CR 11-030 Krishna Bhatta, M.D.

Dr. Hatfield moved to approve the letter of guidance to Dr. Bhatta as edited. Dr. Jones seconded the motion, which passed 6-0-0-1 with Dr. Gleaton recused.

III. Complaints

2. CR 11-402

Dr. Jones moved to dismiss CR 11-402. Dr. Nyberg seconded the motion, which passed unanimously.

The patient correctly complained that she was not notified of lab results that were significantly abnormal. She only obtained the results and identified the need for treatment by calling the physician herself, weeks after the test had been done. The physician admits in her response to the Board that she and her office made a mistake by not notifying the patient. The physician also agrees that the record does not support the testing done by the physician, and does not document her care as she remembers it. The physician now fully understands the importance of accurate documentation in the medical record of the patient's complaints, the physical exam and the physician's thinking. The physician is also very aware of the importance of patient notification of any test results and documentation of such notification in the record. She has worked with her office staff to ensure that this will not happen again.

3. CR 11-343

Dr. Dumont moved to dismiss CR 11-343. Dr. Nyberg seconded the motion, which passed unanimously.

This case involves an institutionalized patient with multiple medical problems who complains that his narcotic prescription was inappropriately discontinued by the institution's medical director. Review of the records shows that the patient failed a urine drug screen and that the patient was offered an alternative treatment plan and alternative medications by another healthcare provider. There was unfortunately confusion regarding the ongoing treatment plan when a transcription error occurred. Because of this the patient briefly had his narcotics restarted and then without explanation to him they were stopped again. This does not appear to have been the fault of the medical director and the patient's care otherwise appears to have been appropriate.

4. CR 11-499

Dr. Hatfield moved to dismiss CR 11-499. Dr. Jones seconded the motion, which passed unanimously.

The complainant feels that his chronic skin condition is not being treated appropriately, and also feels that he is not receiving needed pain medication.

A review of the records shows he has received appropriate medical treatment, including the usage of a multidisciplinary approach to his pain; however, he has not been a willing participant in this approach.

The complainant has a disease that is chronic and can be quite painful at times. He is not an appropriate candidate for narcotic therapy, despite his desire for narcotics, as he has a history of poly-substance abuse. The Board urges him to try other modalities to help with his pain, as suggested by his care team, and also points out that significant weight loss can often help significantly with this condition.

5. CR 11-506

Dr. Andrews moved to order an informal conference in the matter of CR 11-506. Dr. Gleaton seconded the motion, which passed unanimously.

6. CR 11-479

Dr. Jones moved to order an informal conference in the matter of CR 11-479. Dr. Dumont seconded the motion, which passed unanimously.

7. CR 12-22

Dr. Jones moved to order an informal conference in the matter of CR 12-22. Dr. Dumont seconded the motion, which passed unanimously.

8. CR 12-21 Stephen D. Spaulding, M.D.

Dr. Nyberg moved to dismiss CR 12-21 Stephen D. Spaulding, M.D with a letter of guidance. Dr. Gleaton seconded the motion, which passed unanimously.

Competent medical practice includes timely documentation of patient charts, and when this proves difficult to accomplish, it is the physician's personal responsibility to find a remedy so that patient care is not compromised. In addition, when the physician is practicing as an employee, the physician should realize that incomplete or untimely record keeping affects patient care, and reflects poorly not only on himself but also on the employer. This can easily be seen as unprofessional conduct.

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9. CR 10-260

Dr. Gleaton moved to table any action regarding allowing the license to lapse in the matter of CR 10-260. Dr. Jones seconded the motion, which passed unanimously.

10. CR 10-471

Dr. Gleaton moved to table any action regarding allowing the license to lapse in the matter of CR 10-471. Dr. Jones seconded the motion, which passed unanimously.

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11. CR 11-438

Dr. Andrews moved to investigate further CR 11-438. Dr. Gleaton seconded the motion, which passed 6-0-0-1 with Mr. Dyer recused.

12. CR 11-511

Dr. Dumont moved to schedule an informal conference in the matter of CR 11-511. Dr. Jones seconded the motion, which passed unanimously.

13. CR 12-13

Dr. Jones moved to dismiss CR 12-13. Dr. Dumont seconded the motion, which passed unanimously.

The patient states that he sought help from a physician for chronic pain and suboxone therapy. He complains that the physician did not offer him help with pain or initiate suboxone therapy. He also states that the physician cancelled the patient's follow up appointment at the last minute. A review of the records does not support the complaint, but does suggest non-compliance with the treatment plan by the patient along with other inappropriate behavior.

14. CR 12-14

Dr. Andrews moved to dismiss CR 12-14. Dr. Jones seconded the motion, which passed unanimously.

The patient presents a complaint against her orthopedic surgeon who refused to perform her joint replacement surgery unless she consented to post-operative inpatient rehabilitation care. The patient alleges that the surgeon insulted her by implying that her personal hygiene was inadequate. The surgeon responded that her discussion with the patient regarding personal hygiene and infection risk was conducted with tact, professionalism, and in the presence of an office assistant.

15. CR 12-15

Dr. Andrews moved to dismiss CR 12-15. Dr. Dumont seconded the motion, which passed 5-0-0-2 with Dr. Gleaton and Dr. Jones recused.

The complainant alleges inappropriate care after she presented to the emergency room with a non-displaced tibial plateau fracture. The complainant alleges that the physician would not admit her because she had no insurance. The physician responds that the complainant could not be accepted for a covered medical admission since there was no medical justification for such. She was discharged with a splint, a walker, an orthopedic surgical appointment, and a prescription for analgesia after being treated in the Emergency Department.

The physician provided appropriate care to the patient and arranged for outpatient evaluation by a surgeon. Due diligence was used in pursuing an alternative to covered medical admission, but the patient declined this option. The physician had no control over the circumstances that prevented the patient from being admitted for nonmedical reasons. There is no basis for the complaint to be directed at the physician.

16. CR 12-29

Mr. Dyer moved to dismiss CR 12-29. Dr. Jones seconded the motion, which passed 6-0-0-1 with Dr. Dumont recused.

The patient complains the Medical Director, who is responsible for compliance and quality assurance, accessed her medical records and interfered with her primary care physician. Her primary care physician prescribed a schedule II controlled substance after the patient violated a signed narcotic/controlled substance contract by testing positive for THC. The Medical Director followed approved policy in ending any schedule II prescriptions following violation of the narcotic/controlled substance contract. In addition, he provided other appropriate procedures and medicines to be utilized for chronic pain management.

17. CR 12-31

Dr. Jones moved to dismiss CR 12-31. Dr. Gleaton seconded the motion, which passed unanimously.

The patient complains that the physician stopped his hydrocodone, causing him to have an acute involuntary psychiatric admission. There is no information in the record to support the complaint, as the patient should have had an adequate supply of his medicine at the time of his



psychiatric admission. The physician had concerns about the patient's inappropriate use of the hydrocodone and the actual number of pills left in the patient's prescription. Pill counts, drug contracts, urine drug screens and refills on a 28 day schedule can help with the management and documentation of chronic narcotic therapy.

18. CR 12-33

Dr. Gleaton moved to investigate further CR 12-33. Dr. Jones seconded the motion, which passed unanimously.

19. CR 12-37

Dr. Gleaton moved to investigate further CR 12-37. Dr. Jones seconded the motion, which passed unanimously.

20. CR 12-10

Dr. Andrews moved to dismiss CR 12-10. Dr. Gleaton seconded the motion, which passed unanimously.

The complainant alleges unprofessional and incompetent medical treatment of his chronic pain and opioid dependence. The physician discontinued the patient's opioids after the complainant's urine drug screen indicated a violation of the controlled substance agreement. The physician responds that his actions were justified by the findings on the urine drug screen and by the patient's refusal to admit that he had violated his controlled substance agreement.

A review of the records demonstrates appropriate documentation and monitoring of chronic opiate management. Medical management of the chronic pain issues was complicated by endocrine and neurosurgical comorbidities, all well cared for. Missing medication and an inconsistent urine drug screen presented convincing evidence for prescription drug diversion. A second urine drug screen done by an emergency room was positive for other opiates and street drugs. The emergency room made referral to a methadone clinic.

Appropriate medical care was provided to this challenging patient who violated his controlled substances agreement.

21. CR 12-35

Dr. Hatfield moved to dismiss CR 12-35. Dr. Gleaton seconded the motion, which passed unanimously.

In this case a complaint was registered that this physician had provided poor care to patients and was rude to some of the staff who worked with him. The physician's response to this complaint gives insight into the difficulties the facility that hired him is currently having with its surgical department, and why this may have played a role in contributing to a perception of his being rude.

The physician has several excellent letters of recommendation from different physicians, and has no history of previously reported complaints of rudeness after many years in practice. The Board cannot make an accurate assessment of the tone or content of the conversations the physician had with the staff. There is no evidence of substandard patient care.

#### IV. Assessment & Direction

##### 22. AD 12-32 (CR 12-73)

Dr. Dumont moved to issue a complaint in the matter of AD 12-32 (CR 12-73). Dr. Jones seconded the motion, which passed unanimously.

##### 23. AD 12-42

Dr. Gleaton moved to file AD 12-42. Jones seconded the motion, which passed unanimously.

##### 24. Complaint Status Report FYI

##### 25. Consumer Assistant Feedback FYI

##### 26. Physician Feedback FYI

#### V. Informal Conference - CR 11-398 Cressey W. Brazier, M.D.

Dr. Hatfield moved to dismiss CR 11-398 Cressey W. Brazier, M.D. with a letter of guidance. Dr. Gleaton seconded the motion, which passed 7-0-0-1 with Dr. Dumont recused.

In this case the patient was seen in the emergency department (ED) and was going through acute alcohol withdrawal syndrome. During the course of his hospital stay he had evidence of clinical worsening which was not recognized by the caretakers at that time. The patient was transferred to another facility at a time when he was not medically stable. A letter of guidance will point out the need for more frequent and accurate reassessment of the person suffering from this condition as well as the need to follow up aggressively on abnormalities found on laboratory and other testing and the need for more careful documentation in the chart.

#### VI. Minutes of April 10, 2012

Dr. Jones moved to approve the minutes of April 10, 2012. Dr. Gleaton seconded the motion, which passed unanimously.

#### VII. Board Orders & Consent Agreement Monitoring & Approval

##### A. Board Orders [See VIII. Adjudicatory Hearing CR 10-476 Cesar O. Garcia, M.D.]

##### B. Consent Agreement Monitoring and Approval

1. Andrew Fletcher, M.D. (Work Monitor Approval)

Dr. Gleaton moved to approve Jo-Nell Benedetto, M.D. as Dr. Fletcher's workplace monitor while at Seabasticook Valley Hospital. Dr. Nyberg seconded the motion, which passed 5-0-0-2 with Dr. Dumont and Dr. Jones recused.

2. George Butlers, M.D. (Request for unrestricted license)

Dr. Butlers has submitted a request asking the Board to issue him an unrestricted license. Dr. Butlers plans to remain at Seabasticook Valley Hospital with continued peer support which he has effectively utilized over the past year.

Dr. Jones moved to approve an unrestricted license for George Butlers, M.D. Dr. Gleaton seconded the motion, which passed unanimously.

3. CR 10-603 Charles M. Stewart, M.D [See Appendix A Attached]

a. Dr. Andrews moved to approve a consent agreement in the matter of Charles M. Stewart, M.D. Dr. Dumont seconded the motion, which passed 6-0-0-1 with Dr. Gleaton recused.

b. Dr. Dumont moved to approve Whitney Houghton, M.D. as Dr. Stewart's supervising physician. Dr. Andrews seconded the motion, which passed 6-0-0-1 with Dr. Gleaton recused.

c. Dr. Dumont moved to approve Kathleen Sullivan, LCSW as Dr. Stewart's treating therapist. Dr. Nyberg seconded the motion, which passed 6-0-0-1 with Dr. Gleaton recused.

d. Dr. Jones moved to approve the 3-day required PBI Professional Boundaries Course for Dr. Stewart. Dr. Dumont seconded the motion, which passed 6-0-0-1 with Dr. Gleaton recused.

4. CR 11-376 Stephen H. Doane, M.D. [See Appendix B Attached]

Dr. Nyberg moved to approve a consent agreement in the matter of CR 11-376 Stephen H. Doane, M.D. Dr. Jones seconded the motion, which passed unanimously.

5. CR 11-508 Ruth O'Mahoney, M.D. [See Appendix C Attached]

Dr. Nyberg moved to approve a consent agreement in the matter of CR 11-508 Ruth O'Mahoney, M.D. Dr. Jones seconded the motion, which passed unanimously.

VIII. Adjudicatory Hearing CR 10-476 Cesar O. Garcia, M.D.

A. Interlocutory Order

[See Appendix D Attached]

Dr. Jones moved to ratify the Interlocutory Order signed by Chairman Hatfield April 25, 2012 in the matter of CR 10-476 Cesar O. Garcia, M.D. Dr. Gleaton seconded the motion, which passed unanimously.

B. Order for Continuance

[See Appendix E Attached]

Dr. Andrews moved to approve the Order for Continuance in the matter of CR 10-476 Cesar O. Garcia, M.D. Dr. Jones seconded the motion, which passed unanimously.

IX. Remarks of Chairman

A. Report on FSMB Annual Meeting

Dr. Hatfield, Dr. Nyberg and Mr. Dyer reported their experiences at the FSMB annual meeting.

B. Joint Board Statement on Chapter 21 Review (FYI)

X. Executive Director's Monthly Report

The Board accepted the monthly report of the Executive Director.

A. Complaint Status Report (FYI)

B. Policy Review PA Schedule II Prescribers Provided to Public

Dr. Nyberg moved to reaffirm the above policy. Dr. Jones seconded the motion, which passed unanimously.

C. Board Process Presentation (FYI)

1. Permanent License Application Process

Mr. Sprague led the Board through a PowerPoint presentation about the permanent licensing process.

2. Initial Complaint Process

Mr. Terranova led the Board through a PowerPoint presentation about the complaint process.

XI. Medical Director's Report (None)

XII. Remarks of Assistant Attorney General Report (None)

## XIII Secretary's Report

## A. List A

## 1. M.D. List A Licenses for Ratification

Dr. Nyberg moved to ratify the physicians on List A for licensure. Dr. Jones seconded the motion, which passed unanimously.

The following license applications have been approved by Maroulla Gleaton, M.D., Board Secretary and staff without reservation.

NAME	SPECIALTY	LOCATION
Arla, Straightline	Psychiatry	Portland
Cavic, Alexis A.	Internal Medicine	Portland
Dreher, Rebecca A.	Emergency Medicine	Portland
Dunn, Susan E.	Internal Medicine	Lewiston
Ferrell, David R.	Family Practice	Not Listed
Fialkov, Jonathan M.	Urology	Not Listed
Freeman, Jeffrey, J.	Diagnostic Radiology	Not Listed
Garvey, Michael	Ophthalmology	Not Listed
Gottlieb, Philip D.	Radiology	Ellsworth
Janizek, David B.	Diagnostic Radiology	Not Listed
Kandel, Anuj R.	General Surgery	Presque Isle
Karakunnel, Joyson	Internal Medicine/Oncology	Not Listed
Kropp, Elin	Family Practice	Ellsworth
Lerner, Charles E.	Internal Medicine	Not Listed
McCrory, Allison L.	Otolaryngology	Portland
Mills, Angela M.	Emergency Medicine	Bar Harbor
Modarelli, Robert O.	Urology	Presque Isle
Nicholas, Edward P.	Diagnostic Radiology	Bangor
Ortiz, William	Internal Medicine	Caribou
Paetau, Alyssa A.	General Surgery	Norway
Paul, Maureen	Obstetrics/Gynecology	Portland
Pinnaka, Suhas R.	Family Medicine	Waterville
Pomerleau, Dustin	Ophthalmology	Portland
Sanghvi, Amit N.	Diagnostic Radiology	Not Listed
Shaligram, Abhijit S.	General Surgery	Dover Foxcroft
Shridharani, Mahavir	Internal Medicine	Waterville
Tanzer, Marie H.	Pediatrics	Portland
Thibodeau, Evangeline	Infectious Diseases	York
Valade, Michael	Diagnostic Radiology	Not Listed
Varner, Clyde	Neurology	Not Listed
Witkin, Andre J.	Ophthalmology	Waterville
Weaver, Matthew	Family Practice	Damariscotta
Wood, Samantha	Internal Medicine	Portland

## 2. P.A. List A Licenses for Ratification

Dr. Jones moved to ratify the physician assistants on List A for licensure. Dr. Dumont seconded the motion, which passed unanimously.

The following physician assistant license applications have been approved by Maroulla Gleaton, M.D., Board Secretary, without reservation.

NAME	LICENSE	PSP	LOCATION
Chapin, Travis	Inactive	None	None
Cyr, Jessica	Inactive	None	None
Gates, Bethany	Inactive	None	None
Henry, Jarrod	Active	Juluis Krevans, Jr., M.D.	Augusta
McNeil, Jamie	Inactive	None	None
Records, Shannon	Inactive	None	None

#### B. List B Applications for Individual Consideration

##### 1. Kathy Long, P.A.-C.

The Licensure Committee moved to approve the license application of Kathy Long, P.A.-C. The motion passed unanimously.

##### 2. David Breer, M.D.

The Licensure Committee moved to investigate further the license application of David Breer, M.D. The motion passed unanimously.

##### 3. David Miller, M.D. (Tabled)

##### 4. Maxime Coles, M.D.

The Licensure Committee moved to issue a temporary license to Dr. Coles. The motion passed unanimously.

#### C. List C Applications for Reinstatement

##### 1. List C Applications for Reinstatement

Dr. Andrews moved to approve reinstatement for the physicians on List C. Dr. Dumont seconded the motion, which passed unanimously.

The following license reinstatement applications have been approved Maroulla Gleaton, M.D., Board Secretary without reservation.

NAME	SPECIALTY	LOCATION
Kershner, Jeryl D.	Pediatrics	Waterville
Michaelles, Christopher	Cardiovascular Disease	Not Listed
Stahl, Gregory D.	Internal Medicine	Augusta

##### 2. List C Applications for Reinstatement for Individual Consideration (None)

## D. List D Withdrawals

1. List D (1) Withdraw License Application (None)
2. List D (2) Withdraw License from Registration

Dr. Jones moved to approve the following physicians to withdraw from registration. Dr. Dumont seconded the motion, which passed unanimously.

The following physicians have applied to withdraw their licenses from registration.

<u>NAME</u>	<u>LICENSE NO.</u>
Asghar, Irfan	MD17360
Sarnik, Marianna	MD15626
Shah, Chandrakant	MD8189

3. List D (3) Withdraw License from Registration - Individual Consideration (None)

## E. List E Licenses to lapse by operation of law (FYI)

The following physician and physician assistant licenses lapsed by operation of law effective May 8, 2012.

<u>NAME</u>	<u>LICENSE NO.</u>
Ahmad, Mushtaq	MD14648
Azzoni, Alfred	MD8266
Banks, Joey	MD17531
Bhaskar, Jayashri	MD18243
Compton, William	MD16760
Freeman, Alan	MD15768
Gangolli, Vinodkumar	MD11371
Heidelberg, Stephanie	MD18211
Herman, Paul	MD8075
Hurwitz, Craig	MD13481
Lee, Julie	MD17275
Mansfield, William	MD17853
Mehra, Abhishek	MD18405
Nackley, George	MD4591
Nielson, Iver	MD6654
Quickert, Timo	MD18283
Sucsy, Robert	MD7652
Zelada, Juliette	MD18658

## F. List F Licensees requesting to convert to active status (None)

## G. List G Renewal applications for review (None)

## H. List H. Physician Assistant Schedule II Authority Requests for Ratification

## 1. Applications to Renew Schedule II Authority

Dr. Jones moved to ratify approval of the physician assistants below to renew schedule II authority. Dr. Dumont seconded the motion, which passed unanimously.

The following new requests for Schedule II prescribing authority have been approved by Maroulla Gleaton, M.D., Board Secretary.

NAME	PSP	LOCATION
Sandra Gilbert-Lord, P.A.-C	Andrew Hertler, M.D.	Augusta
Heather Renihan, P.A.-C	Paul Mailhot, M.D.	Lewiston
Patrick Sawyer, P.A.-C	Donald Sawyer, M.D.	Presque Isle
Amy Taisey, P.A.-C	Sarah Shubert, M.D.	Falmouth

## 2. Applications for New Schedule II Authority

The following requests to renew Schedule II prescribing authority have been approved by Maroulla Gleaton, M.D., Board Secretary.

Dr. Jones moved to ratify approval of the physician assistants below for new schedule II authority. Dr. Dumont seconded the motion, which passed unanimously.

NAME	PSP	LOCATION
Scott Benevides, P.A.-C	Thomas Murray, M.D.	Portland
Amy Bosinske, P.A.-C	Jonathan Telsey, M.D.	Brunswick
Todd Chisholm, P.A.-C	Eve Wolinsky, M.D.	Fort Kent
Michael Cinilia, P.A.-C	Donato Sisto, M.D.	Portsmouth, NH
Elizabeth Connelly, P.A.-C	David Loxterkamp, M.D.	Belfast
Rupinder Gill, P.A.-C	Donald Endrizzi, M.D.	Portland
Sarah Greven, P.A.-C	Alan Harmatz, M.D.	Lewiston
Chris Hillman, P.A.-C	Douglas Brown, M.D.	Portland
Damon Jordan, P.A.-C	Marc Christensen, M.D.	Lewiston
Lisa Keene, P.A.-C	Robert Beekman, M.D.	Ellsworth
Elaine Mangini, P.A.-C	Kathleen Kotas, M.D.	Trenton
Shawn McGlew, P.A.-C	Scott Kemmerer, M.D.	Waterville
Jeff Nicoletti, P.A.-C	John Solari, M.D.	York
Beverly Wood, P.A.-C	David Strassler, M.D.	Biddeford

## XIV. Standing Committee Reports

## A. Administrative Committee

## 1. Financial Report (FYI)



B. Physician Assistant Advisory Committee

1. Chapter 2 Rule Recommended Changes

Dr. Nyberg moved to approve the Chapter 2 Rules to go forward to rulemaking with the recommended changes from the PA Advisory Committee. Dr. Dumont seconded the motion, which passed unanimously.

XV. Board Correspondence (None)

XVI. FYI


XVII. FSMB Material (FYI)

XVIII. Other Business (None)

XIX. Adjournment

Dr. Dumont moved to adjourn. Dr. Jones seconded the motion, which passed unanimously.

Respectfully submitted,

  
Jean M. Greenwood  
Board Coordinator

# APPENDIX A

## STATE OF MAINE BOARD OF LICENSURE IN MEDICINE

In re:	)	CONSENT
Charles M. Stewart, M.D.	)	AGREEMENT
Complaint No. CR10-603	)	

This document is a Consent Agreement, effective when signed by all parties, regarding a disciplinary action concerning and conditions imposed upon the license to practice medicine in the State of Maine held by Charles M. Stewart, M.D. The parties to the Consent Agreement are: Charles M. Stewart, M.D. ("Dr. Stewart"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

### STATEMENT OF FACTS

1. Dr. Stewart has held a license to practice medicine in the State of Maine since May 18, 1988, and specializes in Psychiatry.
2. On or about December 21, 2010, the Board received a complaint from Patient A, who had been a patient of Dr. Stewart's for approximately eighteen years. The complaint alleged that Dr. Stewart engaged in inappropriate conduct towards Patient A, including: rubbing Patient A's back/neck; telling Patient A that he had a "hard on," "you know how I feel about you," "you will always have me," and "I love you;" taking Patient A's hand and placing it on Dr. Stewart's face; hugging Patient A; and sending Patient A money for "gas money coming down here [to Dr. Stewart's office]" and "Christmas" and signing the letter "Hugs, Charlie." Patient A stated that Dr.

Stewart "should have kept his feelings to himself and never revealed anything (emotions) to" her. According to Patient A, she could "not express the deep loss and betrayal" caused by Dr. Stewart's actions, and felt "embarrassed, ashamed, [and] humiliated." The Board docketed that complaint as CR10-603, and sent it to Dr. Stewart for a response.

3. On February 3, 2011, the Board received a written response from Dr. Stewart to complaint CR10-603. In his response, Dr. Stewart acknowledged that he had been Patient A's psychiatrist for eighteen years. Dr. Stewart also acknowledged that: he remembered rubbing Patient A's back, "but have no memory of saying [he] had a hard on." According to Dr. Stewart, Patient A complained of a severe pain in her back and he was showing her "how to break the muscle tension cycle that was making it worse." Dr. Stewart denied making any inappropriate contact, gestures or words towards Patient A. Dr. Stewart also admitted telling Patient A over the course of his treatment that "you must know how I feel about you" and "I love you." Dr. Stewart thought it odd that Patient A would misinterpret what was going on because these statements were meant to provide reassurance to Patient A about her self-image. According to Dr. Stewart, his stating "I love you" to Patient A "was a code phrase that was often accompanied by 'I respect you, I think you have wonderful qualities if only you would recognize them.'"<sup>1</sup> Dr. Stewart stated that he rarely told Patient A that he loved her, and that Patient A's response to him

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<sup>1</sup> In another part of his response, Dr. Stewart admitted that following one session he hugged Patient A and whispered "I love you" into her ear. According to Dr. Stewart, the "emphasis was on the I, as in 'I love you' even if your boyfriend doesn't."

“often was to say that ‘I love you too.’” Dr. Stewart indicated that “obviously something was going on in her feelings that I did not understand... She misinterpreted my saying I loved her and she apparently thought I meant I wanted to have an affair with her.” Dr. Stewart admitted that he hugged Patient A when she was anguished and crying, and that on one occasion he took Patient A’s hand and placed it on his face “after another particularly trying session.” Dr. Stewart also acknowledged that he and Patient A “joked together about how if the situation were different we might be a good match for each other.” Dr. Stewart admitted that Patient A “does not like to be hugged or have much physical contact” and that Patient A had “a history of being exploited and victimized by men starting from an early age.” Dr. Stewart recognized that Patient A felt “really hurt and victimized” by his actions and that he felt “very sorry that some of [his] actions were interpreted in a manner that [he] did not intend.”

4. On February 11, 2011, the Board received additional information from Patient A in reply to Dr. Stewart’s response. According to Patient A, she felt that Dr. Stewart’s behavior was sexually inappropriate and that it was Dr. Stewart’s responsibility as a professional “not to blur the lines” of the physician-patient relationship. In addition, Patient A stated that Dr. Stewart asked Patient A to show him her mastectomy scar, which she felt was another instance of inappropriate sexual behavior. Patient A believed that touching a patient and telling them “I love you” is “dangerous and misleading.”

5. On or about March 8, 2011, the Board reviewed complaint CR10-603, including Dr. Stewart's response and all investigative information obtained to date, and directed that Dr. Stewart undergo a neuropsychiatric evaluation pursuant to 32 M.R.S. § 3286 to evaluate Dr. Stewart's cognitive and emotional functioning.

6. On September 6, 2011, the Board received a report of the neuropsychiatric evaluation of Dr. Stewart. The evaluation report including the following:

- a. Dr. Stewart did not deny boundary crossing type actions with Patient A, but did deny any eroticized or sexualized intent.
- b. Dr. Stewart engaged in a series of physician-patient boundary crossings with Patient A, who Dr. Stewart described as "highly sexualized," and who had a history of sexual trauma and manifested a potential borderline personality issue, that led to the erosion of a professional relationship "into the realm of something more personal," including:
  - (i) Not charging her a co-pay for 15 years;
  - (ii) Offering her money;
  - (iii) Providing her with money;
  - (iv) Signing a letter "Hugs, Charlie;"
  - (v) Telling her that he "loved her;"
  - (vi) Hugging her;
  - (vii) Placing her hand on his face;
  - (viii) Rolling his chair over to her and putting his knee between hers; and
  - (ix) Asking to see her mastectomy scar.
- c. At least a number of statements and actions acknowledged by Dr. Stewart in the course of his work with Patient A constituted "significant lapses of appropriate professional boundaries."

7. Dr. Stewart acknowledges the following conduct:

- a. Stating that he loved Patient A in a manner that she could misinterpret.
- b. Asking Patient A if it would help normalize her feelings about her mastectomy scar to have him view it.
- c. On a few occasions with Patient A's permission Dr. Stewart hugged her at times of emotional distress.
- d. On one occasion, Dr. Stewart sent Patient A \$30 to help her pay for her cell phone bill and gas money to enable her to drive to an appointment with him that was included in a letter which he signed "hugs, Charlie".
- e. Dr. Stewart once put her hand on his face at a moment of emotional distress for her as she was leaving the office.
- f. On one occasion when Patient A was experiencing a back spasm, and with her permission, Dr. Stewart massaged a knot in her upper back.
- g. On one occasion, Dr. Stewart rolled his chair to within 3 to 4 feet of Patient A and remained there during a time of emotional distress.

8. On October 11, 2011, the Board reviewed complaint CR10-603, including the neuropsychiatric evaluation. Following its review, the Board voted to schedule complaint CR10-603 for an adjudicatory hearing. In addition, the Board authorized its assigned legal counsel to negotiate a consent agreement to resolve complaint CR10-603 without an adjudicatory hearing.

9. This Consent Agreement has been negotiated by and between legal counsel for Dr. Stewart and legal counsel for the Board in order to resolve complaint CR10-603 without an adjudicatory hearing. Absent Dr. Stewart's acceptance of this Consent Agreement by signing and dating it in front of a

notary and mailing it to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before May 4, 2012, the matter will be scheduled for an adjudicatory hearing. In addition, absent the Board's acceptance of this Consent Agreement by ratifying it, the matter will be scheduled for an adjudicatory hearing.

10. By signing this Consent Agreement, Dr. Stewart and his legal counsel waive any and all objections to, and hereby consent to the presentation of this Consent Agreement to the Board by its assigned legal counsel for possible ratification. Dr. Stewart and his legal counsel also forever waive any arguments of bias or otherwise against any of the Board members based solely upon the Board's failure to ratify this proposed Consent Agreement.

#### COVENANTS

In lieu of proceeding to an adjudicatory hearing in this matter, Dr. Stewart agrees to the following:

11. Dr. Stewart neither admits nor denies the allegations in complaint CR10-603. However, Dr. Stewart concedes that should complaint CR10-603 proceed to an adjudicatory hearing, the Board would have sufficient evidence from which it could reasonably conclude that he engaged in unprofessional conduct, and that such conduct constitutes grounds for discipline of his Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

12. Dr. Stewart agrees to accept, and the Board agrees to issue, the following discipline effective upon execution<sup>2</sup> of this Consent Agreement:

a. A REPRIMAND. Dr. Stewart is hereby reprimanded by the Board for engaging in unprofessional conduct towards Patient A. As a psychiatrist, Dr. Stewart is responsible for being aware of and maintaining appropriate physician-patient boundaries. Failure to maintain such boundaries can lead to patient harm. In this case, Patient A felt that Dr. Stewart had breached the trust she placed in him as a professional physician. Dr. Stewart recognizes that, while Patient A may have misinterpreted his intentions, she also felt hurt and victimized as a result of his conduct. Dr. Stewart agrees never to engage in this type of conduct again.

b. A LICENSE PROBATION for five (5) years following the execution of this Consent Agreement. Specific conditions of probation shall include the following:

(i) Ethics and Boundaries Course. Dr. Stewart shall enroll in, attend, and successfully complete a Board-approved substantive course in medical ethics and boundaries within six (6) months following the execution of this Consent Agreement. The ethics and boundaries course must cover the topic of establishing and maintaining appropriate patient-physician boundaries within the context of psychiatry. The Board retains the sole discretion to approve or deny any course proposed by Dr. Stewart to meet this

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<sup>2</sup> For the purposes of this Consent Agreement, "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.



requirement. Dr. Stewart shall provide the Board with documentation of the successful completion of a Board-approved course in medical ethics and boundaries within six (6) months following the execution of this Consent Agreement. Until such time as Dr. Stewart successfully completes a Board approved course in medical ethics and boundaries, he shall not treat any new female patients.

(ii) Mental Health Treatment. Dr. Stewart shall engage in counseling with a mental health provider approved by the Board regarding his countertransference issues with patients, including Patient A. Such counseling shall occur at least once a month. In compliance with this condition, Dr. Stewart shall, within thirty (30) days following the execution of this Consent Agreement, provide the Board with the name of a proposed mental health provider with whom he shall consult and counsel regarding his countertransference issues with patients, including Patient A. The Board retains the sole discretion to approve or deny any individual proposed by Dr. Stewart to meet this requirement. Following one year of treatment, and upon the recommendation of the mental health provider, Dr. Stewart may apply for a modification of this term of probation, which the Board in its sole discretion may approve or deny.

(iii) Practice Monitor. Prior to resuming the treatment of female patients, and following his successful completion of a Board-approved substantive course in medical ethics and boundaries, Dr. Stewart must have a Board-approved practice monitor who shall monitor that part of Dr. Stewart's

medical practice involving the treatment of female patients pursuant to a written agreement approved by the Board. The practice monitor shall be given full access to Dr. Stewart's medical practice, including but not limited to all patient information. The duties of the practice monitor shall include on-going regular monitoring of Dr. Stewart's treatment of female patients, including a review of patient charts. The practice monitor need not be physically present during therapy session, but shall review audiotapes of the therapy sessions as discussed more fully in section (iv) below. In complying with this requirement, Dr. Stewart shall submit to the Board for its approval the name of a proposed practice monitor, whom the Board has the sole discretion to approve or deny. The monitoring physician must be in direct contact with Dr. Stewart and observe him within his medical practice at least once a week, and inform the Board if Dr. Stewart demonstrates any issues with regard to isolation, inappropriate boundaries or decision-making, incompetence, unprofessionalism or any other concerns. The monitoring physician shall report such information to the Board by telephone and in writing within 72 hours or as soon thereafter as possible. Dr. Stewart understands that the monitoring physician will be an agent of the Board pursuant to Title 24 M.R.S. § 2511. The Board-approved monitor shall provide the Board with reports regarding Dr. Stewart's medical practice on or before July 9<sup>th</sup>, October 9<sup>th</sup>, January 9<sup>th</sup>, and April 9<sup>th</sup> of each year following the execution of this Consent Agreement.

(iv) Audio Recording of Treatment Sessions. Dr. Stewart shall perform an audio recording of all treatment sessions involving female patients, which recordings shall be created and maintained in his office, but ~~kept separately from the patient's file in order to preserve the confidentiality of~~ the psychotherapy sessions. Dr. Stewart shall assign an identification number for each patient's audio recordings, and maintain a separate list that identifies each patient with her corresponding identification number. Dr. Stewart shall provide a copy of this list, the patient identifying numbers, and audio recordings to the Board upon request. During each quarter, the practice monitor shall review at least ten<sup>3</sup> (10) audio recordings of ten (10) different patients, which audiotapes shall be selected by random number selection. In addition, the practice monitor shall review the medical records of the ten (10) ~~patients. The practice monitor shall review the audio recordings and the~~ corresponding patient records to ensure, among other things, that Dr. Stewart is complying with appropriate standards of physician-patient boundaries. Following one year of monitoring, and upon the recommendation of the practice monitor, Dr. Stewart may apply for a modification of the number of patient psychotherapy audio recordings reviewed by the practice monitor each calendar quarter. The Board retains the sole discretion to approve or deny the modification.

(v) Within one (1) year of the execution of this Consent Agreement, Dr. Stewart shall reimburse the Board \$1,501.90 as the actual

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<sup>3</sup> Dr. Stewart typically conducts fifty (50) minutes psychotherapy sessions.

costs incurred by the Board for the investigation of this matter. Payment shall be made by certified check or money order made payable to "Maine Board of Licensure in Medicine" and be remitted to Maria MacDonald, Investigator, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

13. Violation by Dr. Stewart of any of the terms or conditions of this Consent Agreement shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of re-licensure.

14. Pursuant to 10 M.R.S.A. § 8003(5) the Board and Dr. Stewart agree that the Board has the authority to issue an order, following notice and hearing, modifying, suspending or revoking his license in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

15. Dr. Stewart waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Stewart agrees that this Consent Agreement and Order is a final order resolving complaint CR10-603. This Consent Agreement is not appealable and is effective until modified or rescinded by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General. Requests for amendments by Dr. Stewart shall be made in writing and submitted to the Board.

16. Unless otherwise specifically provided by this Consent Agreement, after successfully completing three (3) years of practice under the terms and conditions of this Consent Agreement, Dr. Stewart may apply to the Board to modify the terms and conditions of this Consent Agreement. Thereafter, Dr. Stewart may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement. Upon making such a petition, Dr. Stewart shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Stewart's petition; (b) grant Dr. Stewart's petition; and/or (c) grant Dr. Stewart's petition in part as it deems appropriate to ensure the protection of the public. Any decision by the Board on this issue need not be made pursuant to a hearing and is not appealable.

17. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Stewart or any other matter relating to this Consent Agreement.

18. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

19. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB), the Healthcare Integrity and Protection Data Bank (HIPDB), and the Federation of State Medical Boards (FSMB).

20. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto, including any and all medical practice partners. If any clause of this Consent Agreement is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

21. The Board and Dr. Stewart agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above as evidence of a pattern of conduct in the event that similar proven allegations are brought against Dr. Stewart in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Stewart's license.

22. Dr. Stewart acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

23. Dr. Stewart has been represented by James G. Goggin, Esq., in the negotiation of the terms of this Consent Agreement.

I, CHARLES M. STEWART, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS AND AGREE TO ABIDE BY THEM. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 5/4/12

Charles M. Stewart

CHARLES M. STEWART, M.D.

STATE OF Maine

\_\_\_\_\_, S.S.

Personally appeared before me the above-named Charles M. Stewart, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: May 4, 2012

Linda S. LeClair  
NOTARY PUBLIC/ATTORNEY

Linda S. LeClair

MY COMMISSION ENDS: \_\_\_\_\_

LINDA S. LeCLAIR  
Notary Public, Maine  
My Commission Expires March 9, 2013

DATED: May 4, 2012

J. Goggin  
JAMES G. GOGGIN, ESQ.  
ATTORNEY FOR CHARLES M. STEWART,  
M.D.

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: May 21, 2012

Gary R. Hatfield  
GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED:

5/25/12



DENNIS E. SMITH

Assistant Attorney General

Effective Date:

5/25/12



STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

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IN RE:	)	CONSENT AGREEMENT
STEPHEN H. DOANE, M.D.	)	FOR DISCIPLINE AND
Complaint No. CR11-397	)	RESTRICTED/CONDITIONAL
	)	LICENSURE

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This document is a Consent Agreement For Discipline and Restricted/Conditional Licensure, effective when signed by all parties, regarding discipline imposed upon and the issuance of an active conditional license to practice medicine in the State of Maine to Stephen H. Doane, M.D.

The parties to this Consent Agreement are: Stephen H. Doane, M.D. ("Dr. Doane"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Office of the Attorney General.

STATEMENT OF FACTS

1. The Board first issued Dr. Doane a medical license on November 18, 1985. Dr. Doane is a Board Certified Internist and is Board Certified in Geriatrics.

2. On September 13, 2011, the Board reviewed information received from Biddeford Police Department expressing concerns regarding Dr. Doane's prescribing of controlled substances regarding eight (8) individuals. The Board also reviewed the medical records of these individuals, including patient A, who died of an apparent drug overdose on January 18, 2011.<sup>1</sup> Following its review

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<sup>1</sup> According to the information, a number of prescription drugs were found at the scene, including medications prescribed to A by Dr. Doane. A medication count

of this information, the Board voted to initiate a complaint against Dr. Doane's Maine medical license regarding one of the eight individuals.<sup>2</sup> The Board docketed the complaint as CR 11-397, and sent it, together with a subpoena for the patient A's medical records, to Dr. Doane for a response.

3. On November 30, 2011, the Board received a written response to complaint CR11-397, together with patient A's medical records, from Dr. Doane, who has been providing medical care to patients for twenty-five years in Maine. In his response, Dr. Doane took full responsibility for prescribing the amount of medication he did to patient A. According to Dr. Doane, he saw patient A on two occasions – January 7 & 10, 2011<sup>3</sup> - and made several serious missteps at the outset of her treatment, which resulted in his prescribing of a significant amount of narcotics. Dr. Doane explained the background of the medical practice, its medical record-keeping, and his prior education in chronic pain management. Dr. Doane admitted that he did not use the prescription monitoring program (PMP) to check patient A's history of prescription drugs prior to prescribing patient A narcotics. Dr. Doane did have patient A sign a written narcotics agreement. Dr. Doane explained his medical decision-making

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showed that only 48 of 180 tablets of Oxycodone prescribed by Dr. Doane on January 11, 2011, were still present in the bottle.

<sup>2</sup> The Board took no further action regarding the other seven patients as they did not warrant further action.

<sup>3</sup> On January 7, 2011, Dr. Doane prescribed Oxycodone HCL 15 mg 60 tablets (15 day supply); trazadone 100 mg 60 tablets; Xanax 2mg 90 tablets; Ambien 10 mg 30 tablets; baclofen 20 mg 90 tablets; and mirtazapine 15 mg 30 tablets.

On January 10, 2011, Dr. Doane prescribed Oxycodone HCL 30 mg 180 tablets (30 day supply).

with regard to prescribing narcotics for patient A, including his decision to increase the dosage and frequency. In making this decision, Dr. Doane reviewed patient A's past medical history with her, at which time patient A did not mention substance abuse. Dr. Doane admitted that when he first saw patient A, he had not received patient A's more recent medical records. Those medical records indicated that patient A:

a. had been treated by another physician who would no longer prescribe narcotics for patient A.

b. had been hospitalized in November 2010 for polysubstance overdose (accidental v. intentional) with urine positive for opiates, benzodiazepines, amphetamine and cocaine. During that hospitalization, patient A developed aspiration pneumonia with acute respiratory failure and required mechanical ventilation.

c. had a history of mental health treatment, which identified patient A as having a borderline personality disorder and history of suicide attempts.

d. had a history of not taking medications that had been prescribed.

e. had a history of chronic obstructive pulmonary disorder and sleep apnea.

In addition, According to Dr. Doane, patient A was initially scheduled to see him in Dec 2010, but failed to show for the appointment. Dr. Doane received a telephone message indicating that patient A had been in the hospital for three weeks on a breathing machine, was very sick, could barely walk, has MS and

may have pneumonia. Unfortunately, Dr. Doane did not remember this telephone message about A during his first appointment with her in January 2011. According to Dr. Doane, had he been aware of all of patient A's previous medical records and recalled the telephone message, he would not have prescribed any narcotic medication to patient A. In addition, Dr. Doane indicated that, except for elderly and terminal patients who are on long standing stable doses of pain medication, he no longer desired to treat chronic pain patients.

4. On January 10, 2012, the Board reviewed complaint CR11-397, and voted to schedule the matter for an adjudicatory hearing. In addition, the Board voted to authorize its assigned legal counsel to negotiate a consent agreement with Dr. Doane to resolve complaint CR11-397 without hearing.

5. This Consent Agreement has been negotiated by and between legal counsel for Dr. Doane and the Maine Office of the Attorney General in order to resolve complaint CR11-397 without an adjudicatory hearing. Absent Dr. Doane's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before May 8, 2012, the Board will resolve this matter by holding a consolidated adjudicatory hearing at a later date.

6. By signing this Consent Agreement, Dr. Doane waives any and all objections to, and hereby consents to allow the Board's legal counsel to present

this proposed Consent Agreement to the Board for possible ratification. Dr. Doane also forever waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

#### COVENANTS

In lieu of proceeding to an adjudicatory hearing the Board and Dr. Doane agree to the following disposition.

7. Dr. Doane concedes that based upon the facts described in paragraphs 1 to 3 above that the Board has sufficient evidence from which it could conclude that he failed to adhere to Board Rule Chapter 21 "Use of Controlled Substances For Treatment of Pain" by: failing to obtain patient A's previous medical records prior to prescribing controlled medications to patient A; failing to access and review the PMP prior to prescribing the amount and dosage of controlled medications to patient A; failing to recall the telephone message regarding patient A and her recent hospitalization and accompanying respiratory distress prior to prescribing medications to patient A; and increasing the dosage (doubling), frequency, and amount (doubling) of narcotics prescribed to patient A only four days after initially prescribing 15 days worth of narcotics to patient A – which was done without obtaining patient A's previous medical records or reviewing the PMP. Dr. Doane concedes that such conduct, if proven, could constitute grounds for discipline of and the denial of his application to renew his Maine medical license for unprofessional

conduct pursuant to 32 M.R.S.A. § 3282-A(2)(F).

8. As discipline for the conduct admitted above, Dr. Doane agrees to:

a. Accept a REPRIMAND. As a medical professional, Dr. Doane was responsible for being aware of and complying with accepted standards of care for the diagnosis and treatment of chronic pain with narcotics and benzodiazepines.

b. Reimburse the Board One Thousand One Hundred Eighty-Five Dollars and Zero Cents (\$1,185) as actual costs of the investigation of this matter. Dr. Doane shall ensure that he makes full payment of reimbursement to the Board within six (6) months following the execution of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Maine Board of Licensure in Medicine," and be remitted to Maria MacDonald, Investigator, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

c. Effective July 8, 2012, accept the following license restriction, which shall remain in effect unless or until this Consent Agreement is rescinded or amended by all of the parties hereto: Dr. Doane shall immediately cease prescribing any controlled medications, including all opiates and benzodiazepines, for the treatment of chronic pain except for:

(i) Patients in skilled nursing facilities or long-term care facilities;

(ii) Patients in hospice care; or

(iii) Patients with metastatic cancer.

~~In complying with this restriction, Dr. Doane shall ensure that any and all~~  
prescriptions that he issues for the three excepted categories of patients  
~~identified above are annotated with the words "skilled nursing facility/long-~~  
term care" or "hospice care" or "metastatic cancer" as applicable to each  
patient.

9. Dr. Doane may prescribe controlled substances for no more than  
ten (10) consecutive days to treat acute conditions. In addition, to the extent  
that Dr. Doane prescribes any controlled drugs to patients for acute pain, Dr.  
Doane agrees that he shall comply with Board Rule, Chapter 21, "Use of  
Controlled Substances For Treatment of Pain."

10. In order to ensure his compliance with the restriction on his ability  
to prescribe controlled drugs for the treatment of chronic pain, Dr. Doane  
agrees to fully cooperate with the Board and to permit the Board or its agent(s)  
to inspect his medical practice, including allowing the Board or its agents full  
access to and copying of the patient medical records of his medical practice as  
allowed by law.

11. Dr. Doane waives his right to a hearing before the Board or any  
court regarding all findings, terms, restrictions and conditions of this Consent  
Agreement. Dr. Doane agrees that this Consent Agreement is a final order  
resolving complaints CR11-397. This Consent Agreement is not appealable  
and is effective until or unless modified or rescinded in writing by the parties

hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

12. The Board and the Maine Office of the Attorney General may communicate and cooperate regarding Dr. Doane or any other matter relating to this Consent Agreement.

13. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408. This Consent Agreement constitutes disciplinary and adverse licensing action that is reportable to the Federation of State Medical Boards (FSMB), the National Practitioner Data Bank (NPDB), and the Healthcare Integrity and Protection Data Bank (HIPDB).

14. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

15. The Board and Dr. Doane agree that no further agency or legal action will be initiated against him by the Board based upon complaint CR11-397, except or unless he fails to comply with the terms and conditions of this Consent Agreement.

16. Dr. Doane acknowledges that, pursuant to Title 10 M.R.S. § 8003(5)(B), his failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action against his Maine medical license, including but not limited to an order, after



hearing, imposing additional fines and costs.


~~17. Dr. Doane acknowledges and agrees that, pursuant to Title 10~~  
M.R.S. § 8003(5), the Board has the authority to suspend or revoke his medical  
~~license in the event that he fails to comply with any terms or conditions of this~~  
Consent Agreement.

18. Dr. Doane has been represented by Emily A. Bloch, Esq., who has participated in the negotiation of this Consent Agreement.

19. Dr. Doane acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

**I, STEPHEN H. DOANE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.**

Dated: May 8, 2012

  
STEPHEN H. DOANE, M.D.

STATE OF MAINE, S.S.

Personally appeared before me the above-named, Stephen H. Doane, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

Dated: MAY 8, 2012

[Signature]  
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: July 2013

Dated: MAY 11<sup>th</sup>, 2012

Emily A. Bloch  
EMILY A. BLOCH, ESQ.  
Attorney for Stephen H. Doane, M.D.

STATE OF MAINE BOARD OF  
LICENSURE IN MEDICINE

Dated: 5/16/12

[Signature]  
GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF ATTORNEY GENERAL

Dated: 5/18/12

[Signature]  
DENNIS E. SMITH  
Assistant Attorney General

Effective Date: 5/18/12

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

IN RE:	)	CONSENT AGREEMENT
RUTH O'MAHONY, M.D.	)	FOR DISCIPLINE AND
Complaint No. CR11-508	)	INACTIVE LICENSURE
	)	

This document is a Consent Agreement For Discipline and Inactive Licensure, effective when signed by all parties, regarding discipline imposed upon and the issuance of an inactive license to practice medicine in the State of Maine to Ruth O'Mahony, M.D. The parties to this Consent Agreement are:

Ruth O'Mahony, M.D. ("Dr. O'Mahony"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Office of the Attorney General.

STATEMENT OF FACTS

1. The Board first issued Dr. O'Mahony a medical license on December 10, 2008. Dr. O'Mahony specializes in General Surgery.

2. On September 9, 2009, Dr. O'Mahony entered into a Settlement Agreement with the State of New Hampshire Board of Medicine. The Settlement Agreement was based upon an investigation that was instituted following a report that Dr. O'Mahony had resigned her privileges in general surgery at Southern New Hampshire Medical Center (SNHMC), which had also temporarily suspended her privileges prior to her resignation on the basis of clinical and patient safety concerns. Investigation revealed that four of six surgical cases reviewed constituted either a pattern of incompetent practice or repeated instances of simple negligence. As a result, Dr. O'Mahony agreed to

accept a reprimand, successfully complete a preceptorship under the direction of a physician, and provide a copy of the Settlement Agreement to any current or future employer. A copy of that Settlement Agreement is affixed to and incorporated into this Consent Agreement as "Attachment A."

3. On December 13, 2011, the Board reviewed information received from Mayo Regional Hospital in Dover-Foxcroft, Maine that it had taken the following adverse action with regard to Dr. O'Mahony's surgical privileges at that facility:

- a. It revoked her clinical privileges in the areas of all abdominal procedures and colonoscopies;
- b. It removed her from general surgery or other service call; and
- c. It required precepting on all other privileges.

According to Mayo Regional Hospital, its Medical Staff Executive Committee had taken this action based upon five cases of concern during a two-week period in 2011. According to Mayo Regional Hospital, Dr. O'Mohony accepted this action by the hospital, and her employment was terminated on October 3, 2011. Following its review of this information, the Board voted to initiate a complaint against Dr. Mahony's Maine medical licensed pursuant to 32 M.R.S. § 3282-A. The Board docketed the complaint as Complaint No. CR11-508, and sent it to Dr. O'Mahony for a response.

4. On January 11, 2012, the Board received a written response from Dr. O'Mahony to Complaint No. CR11-508. According to Dr. O'Mahony, when

she began working at Mayo Regional Hospital she was required to undergo a one-year preceptorship that included supervision during certain operative procedures and a review of her patient charts. According to Dr. O'Mahony at no time during the preceptorship did any preceptors express any concerns regarding her professional competency, and she continued to work at Mayo Regional Hospital for the next two and a half years without concern. Dr. O'Mahony acknowledged that in July 2011, she had a period of approximately ten days during which five of her patients had major complications as a result of her treatment. As a result, Mayo Regional Hospital conducted an investigation, which resulted in the restriction of her privileges and early termination of employment.

5. On or about February 8, 2012, the Board received supplemental information from Dr. O'Mahony, which she requested the Board to consider along with her earlier response. According to Dr. O'Mahony, at the time of the five surgical complications, she was under tremendous and unusual stress, which Dr. O'Mahony attributed to the on-going and unusually frequent on-call responsibility, a new medical diagnosis, and the death of a close relative. Dr. O'Mahony stated that her work duties made it difficult to engage in lifestyle modifications critical for her to get and remain healthy. This confluence of stressors, along with her increasing fatigue, began weighing heavily upon Dr. O'Mahony's mental health. As a result, Dr. O'Mahony indicated that she sought to relocate to another state to pursue, for the foreseeable future, a non-

clinical position in the healthcare field where she can apply her medical knowledge and training, and where her husband is more likely to find employment in his specialized field.

6. On February 14, 2012, the Board reviewed complaint CR11-508, and voted to offer Dr. O'Mahony this Consent Agreement in order to resolve the matter without further proceedings.

7. This Consent Agreement has been negotiated by and between legal counsel for Dr. O'Mahony and the Maine Office of the Attorney General in order to resolve complaint CR11-508 without an adjudicatory hearing. Absent Dr. O'Mahony's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before April 26, 2012, the Board shall take further action as authorized by law.

8. By signing this Consent Agreement, Dr. O'Mahony waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification. Dr. O'Mahony also forever waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

#### COVENANTS

In lieu of proceeding to an adjudicatory hearing the Board and Dr. O'Mahony agree to the following disposition.

9. Dr. O'Mahony concedes that based upon the facts described in paragraphs 1 to 8 above that the Board has sufficient evidence from which it could conclude that she engaged in a pattern of conduct that constitutes ~~incompetence in the practice of medicine.~~ Dr. O'Mahony concedes that such conduct, if proven, could constitute grounds for discipline of her Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(E).

10. As discipline for the conduct admitted above, Dr. O'Mahony agrees to accept an INACTIVE MEDICAL LICENSE. Until and unless this Consent Agreement is rescinded or amended in writing, Dr. O'Mahony's Maine medical license shall remain inactive. Dr. O'Mahony understands and agrees that she cannot and will not practice medicine in the State of Maine with an inactive medical license.

11. Dr. O'Mahony waives her right to a hearing before the Board or any court regarding all findings, terms, restrictions and conditions of this Consent Agreement. Dr. O'Mahony agrees that this Consent Agreement is a final order resolving complaint CR11-508. This Consent Agreement is not appealable and is effective until or unless modified or rescinded in writing by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

12. The Board and the Maine Office of the Attorney General may ~~communicate and cooperate regarding Dr. O'Mahony or any other matter~~

relating to this Consent Agreement.

13. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408. This Consent Agreement constitutes disciplinary and adverse licensing action that is reportable to the Federation of State Medical Boards (FSMB), the National Practitioner Data Bank (NPDB), and the Healthcare Integrity and Protection Data Bank (HIPDB).

14. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

15. The Board and Dr. O'Mahony agree that no further agency or legal action will be initiated against her by the Board based upon complaint CR11-508, except or unless she fails to comply with the terms and conditions of this Consent Agreement.

16. Dr. O'Mahony acknowledges that, pursuant to Title 10 M.R.S. § 8003(5)(B), her failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action against her Maine medical license, including but not limited to an order, after hearing, imposing additional fines and costs.

17. Dr. O'Mahony acknowledges and agrees that, pursuant to Title 10 M.R.S. § 8003(5), the Board has the authority to suspend or revoke her medical license in the event that she fails to comply with any terms or conditions of this Consent Agreement.



18. Dr. O'Mahony has been represented by Emily A. Bloch, Esq., who has participated in the negotiation of this Consent Agreement.

19. Dr. O'Mahony acknowledges by her signature hereto that she has read this Consent Agreement, that she has had an opportunity to consult with an attorney before executing this Consent Agreement, that she executed this Consent Agreement of her own free will and that she agrees to abide by all terms and conditions set forth herein.

**I, RUTH O'MAHONY, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.**

Dated: 5/16/2012

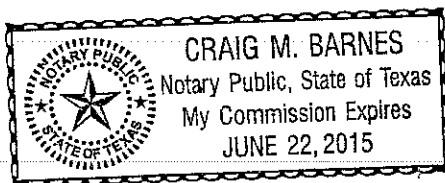
Ruth O'Mahony  
RUTH O'MAHONY, M.D.

STATE OF TEXAS  
TRAVIS COUNTY, S.S.

Personally appeared before me the above-named, Ruth O'Mahony, M.D., and swore to the truth of the foregoing based upon her own personal knowledge, or upon information and belief, and so far as upon information and belief, she believes it to be true.

Dated: 5/16/12

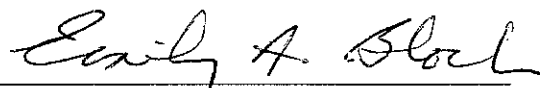
[Signature]  
NOTARY PUBLIC/ATTORNEY



MY COMMISSION ENDS: JUNE 22 2015

Dated:

5/22/12



EMILY A. BLOCH, ESQ.

Attorney for Ruth O'Mahony, M.D.

STATE OF MAINE BOARD OF  
LICENSURE IN MEDICINE

Dated:

5/23/12



GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF ATTORNEY GENERAL

Dated:

5/30/12



DENNIS E. SMITH

Assistant Attorney General

Effective Date:

5/30/12

## MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Cesar Garcia, M.D. ) INTERLOCUTORY  
Licensure Disciplinary Action/Renewal ) DECISION AND ORDER  
Complaint No. CR10-476 )

**I. PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. Sec. 3282-A, *et seq.*, 5 M.R.S. Sec. 9051, *et seq.* and 10 M.R.S. Sec. 8001, *et seq.*, the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine at 1:00 p.m. on April 10, 2012. The purpose of the meeting was to conduct a consolidated adjudicatory hearing to decide the following two issues. First, whether Cesar Garcia, M.D. violated Board statutes and Rules as alleged in the Notice of Hearing which would subject him to disciplinary sanctions. Second, whether the Board would grant Dr. Garcia's request for renewal of his license to practice medicine in this state.<sup>1</sup> A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Gary R. Hatfield, M.D., public member, David Nyberg, Ph.D., public member, Cheryl Clukey, Maroulla S. Gleaton, M.D., David H. Dumont, M.D., David D. Jones, M.D., Louisa Barnhart, M.D., public member Dana D. Dyer, and David R. Andrews, M.D. Dr. Garcia appeared but was unrepresented by an attorney. Dennis Smith, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member. The Board then took administrative notice of its statutes and Rules. State's exhibits 1-17 and Respondent's exhibits 1 and 2 were admitted into the Record. Subsequent to the parties' opening statements, the taking of testimony, exhibits, and closing arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence.

<sup>1</sup> The State filed a Motion to Consolidate which was granted without objection at the hearing.

## II.

### FINDINGS OF FACT

1. Dr. Cesar Garcia, 52 years of age, has held a license to practice medicine in the State of Maine since September 21, 1999. Dr. Garcia specializes in Emergency Medicine.
2. On November 14, 2006, Dr. Garcia entered into a Consent Agreement with the Board and Department of the Attorney General regarding Complaint CR04-120, which involved a lumbar puncture procedure performed by Dr. Garcia. In that Consent Agreement, Dr. Garcia admitted that the Board had sufficient evidence from which it could reasonably conclude that he: (a) was responsible for normal saline arriving at the laboratory instead of CSF (cerebral spinal fluid); (b) was responsible for miscommunications with the physicians who followed up with this incident; (c) was responsible for failing to create a procedure note for the lumbar puncture; and (d) was responsible for the techniques he employed in performing the lumbar puncture.
3. Dr. Garcia admitted that the above conduct fell below the standard of care and constituted unprofessional conduct and grounds for discipline of his Maine license pursuant to 32 M.R.S. § 3282-A(2)(F). As discipline for that conduct, Dr. Garcia accepted a reprimand and agreed to follow the guidelines for the standard resident work hours so that he did not become excessively fatigued, which the Board concluded was the cause of Dr. Garcia's conduct.
4. On or about September 20, 2010, the Board received information from Bayne-Jones Army Community Hospital (BJACH) in Fort Polk, Louisiana, that it had removed Dr. Garcia from providing services in the Emergency Department on September 13, 2010, as a result of his presenting to work with obvious signs of intoxication. According to this same information, Dr. Garcia had been previously counseled about the use of alcohol in July 2010.
5. On September 20, 2010, Mark Cooper, M.D., Medical Director for the Board, spoke with Dr. Garcia by telephone. According to Dr. Cooper, Dr. Garcia did not dispute the information received from BJACH. Dr. Garcia stated that the past years have been increasingly stressful both mentally and financially. According to Dr. Garcia, as a result of a prior consent agreement with the Maine Board, he was unable to be licensed in Arizona, his home state, and has only been able to obtain work at various governmental facilities around the country while working under his Maine license. According to Dr. Garcia, the constant traveling and lack of a steady paycheck have created a great deal of stress for him and his family.

6. Dr. Garcia explained during the September 20, 2010 telephone conversation with Dr. Cooper that on July 20, 2010, he had driven straight from Arizona to Fort Polk, Louisiana to make his scheduled shift at the BJACH emergency room. He only had a few hours after arriving before he was to report for work. He subsequently went to work in the BJACH emergency room and shortly thereafter passed out. A blood sample was drawn which allegedly revealed benzodiazepine medication (prescribed sleep aid) and alcohol. Dr. Garcia stated that his syncopal episode was due to his serum creatinine being 1.7 when his blood was tested and that he was extremely dehydrated from the drive.

7. Dr. Garcia, additionally during the above phone call, discussed with Dr. Cooper the episode on September 13, 2010. Dr. Garcia stated that he went out in the morning to unwind with some of the ER staff after a night shift. Dr. Garcia admitted consuming alcohol. Dr. Garcia went home to sleep and returned to work at the ER for the night shift when he was confronted about being intoxicated. According to Dr. Garcia, he requested a breath or blood test at that time, but his request was refused. Instead, he was advised to seek counseling. Dr. Garcia told Dr. Cooper that shortly thereafter he enrolled in the Maricopa County detoxification program. Dr. Cooper discussed the Arizona Physician Health Program and informed Dr. Garcia how to contact them.

8. On September 23, 2010, Dr. Garcia spoke again with Dr. Cooper by telephone. Dr. Garcia informed Dr. Cooper that the Arizona Physician Health Program referred him to the Sundance Center for an intake evaluation which occurred later that day. On September 28, 2010, Dr. Cooper received a letter from the Sundance Center that confirmed Dr. Garcia's enrollment and participation.

9. On October 12, 2010, the Board received a letter from Dr. Garcia which contained a different account of his activities during September 13, 2010. According to Dr. Garcia, on that day, he finished his second night shift at BJACH in the early morning. After work, Dr. Garcia went to Wal-Mart and bought a flask of whiskey, which he brought back to his hotel room. There, he drank "two small cups of Coca-Cola, mixed with ice, and whisky, and watched television before going to sleep." At approximately 2:30 p.m., Dr. Garcia awoke and "took another drink to go back to sleep." Dr. Garcia later woke up and went to the ER for his shift at 6:00 p.m. According to Dr. Garcia, the department head, who had been "cued" by another physician, asked Dr. Garcia if he had been drinking. According to Dr. Garcia, he "explained the timing and quantity of the drinks conveying... that [he] did not have any intention of coming to work with an alcohol level."

According to Dr. Garcia, the department head told him to take a few hours off and denied his requests to test his blood-alcohol level.

10. In his letter of October 12, 2010, Dr. Garcia confirmed BJACH's report that he fainted in the ER on July 20, 2010 and was tested as having a "creatinine level of 2.0 [and] an alcohol level of 0.02, and urine positive for benzodiazepines." When confronted by the hospital staff, Dr. Garcia "confirmed that the benzodiazepines were prescription, and that the drink had been before going to sleep for [his] shift." According to Dr. Garcia, the "concern that [he] had drank alcohol purposefully before work was allayed and my renal failure explained how [he] had a prolonged trace alcohol level, [so] they decided to give [him] another chance." Dr. Garcia admitted that he "began to drink alcohol on flights to work and in [his] hotel after work to decompress from stress over the last one-half year's period."

11. Dr. Garcia also in the above correspondence described the steps that he had taken to address this issue after being terminated from BJACH. The actions included total abstinence, attending a substance abuse addiction program, treating with an addiction psychologist, and addressing his anxiety. Dr. Garcia described the stressors in his life that he believed led to his use of alcohol. He also fully recognized that his actions were not appropriate and accepted responsibility for what transpired.

12. On October 12, 2010, the Board reviewed the information provided by BJACH and Dr. Garcia, and, pursuant to 32 M.R.S. § 3282-A, voted to initiate a complaint against Dr. Garcia's Maine medical license alleging unprofessional conduct and habitual substance abuse that was foreseeably likely to result in Dr. Garcia performing services in a manner that endangered the health or safety of patients. The Board docketed the complaint as CR10-476.

13. On or about December 1, 2010, the Board received a response from Dr. Garcia to complaint CR10-476. In his response, Dr. Garcia indicated that he had completed the intensive outpatient program at the Sundance Center, and had received substance abuse supplementary services at the Community Bridges Outpatient program. In addition, Dr. Garcia indicated that he was undergoing monitoring for alcohol consumption, and was abstinent from alcohol. According to the November 30, 2010 Community Bridges Outpatient treatment team notes, Dr. Garcia was making progress, but had not as yet achieved the goals articulated in his individualized treatment plan.

14. Dr. Garcia, in his December 1, 2010 response, again attributed his positive alcohol test at BJACH in July 2010 as a “primary medical problem, like any other organ failure... [and that] trace alcohol was detected because of [his] renal failure.”

15. The above letter also contained Dr. Garcia’s third different rendition of the September 13, 2010 incident at BJACH. Dr. Garcia disclosed to the Board for the first time that he “complained of feeling drugged by Benadryl and feeling anticholinergic symptoms of dry mouth and slurring speech and dizziness” during the event. According to Dr. Garcia, before work on September 13, 2010, he had taken his “first dose of a sample of Seroquel that was a much higher milligram dosage with new extended-release activity.” Dr. Garcia asserted that the “side effects of a sudden escalation of a Seroquel dose would lead to the anticholinergic complaints [he] had.” He wrote that “when I arrived at work and was asked if I was drunk, I knew that I was not, and said I wasn’t.” This was the first time that Dr. Garcia disclosed to the Board or its agents that he was being prescribed Seroquel at the time of this incident. Significantly, there were possible synergistic effects that Seroquel and benzodiazepines could have produced with the alcohol consumed by Dr. Garcia before reporting to work at BJACH.<sup>2</sup> Dr. Garcia did not address this issue in his response.

16. Dr. Garcia’s supervising physician, Dr. Troy Prairie, Chief Primary Care Dept., recalled that Dr. Garcia had presented to work on September 13, 2010 “with obvious signs of intoxication,” which was confirmed by two physicians and a military police officer. He was removed from service and advised to get help with his addiction.

17. On or about December 13, 2010, the Board received Dr. Jon Solberg’s letter regarding Dr. Garcia. Dr. Solberg, Chief of Emergency Medicine at BJACH, revealed information relevant to the allegations that Dr. Garcia had engaged in habitual substance abuse on July 20 and September 13, 2010. Dr. Solberg also complimented Dr. Garcia on his competency and other personal traits as noted below.

18. On the positive side, Dr. Prairie noted that “Dr. Garcia’s performance as a physician in the BJACH emergency room was, at times, outstanding.” This assessment was similar to that of Dr. Solberg who described Dr. Garcia as an “efficient and clinically sound physician. He consistently displayed good interpersonal skills with patients and was known by staff as a pleasant and even enjoyable physician to work with.”

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<sup>2</sup> The pharmaceutical warnings regarding Seroquel XR include the ingestion of alcohol which may make one or more of the side effects worse-e.g. “... movements you cannot control in your face, tongue, or other body parts.”

The above comments were also consistent with those made by several of Dr. Garcia's former peers at Thayer Hospital, Waterville, Maine. However, the medical director at Thayer apparently felt that he and the medical director of the emergency room could no longer trust Dr. Garcia since he changed his story several times regarding his handling of the subject cerebral spinal fluid specimen. The lack of trust resulted in both the termination of Dr. Garcia's employment at Thayer and subsequently the November 4, 2006 consent agreement with this Board.

19. Dr. Mark Cooper, M.D. expressed his opinions during this hearing that Dr. Garcia's actions on July 20, 2010 and September 13, 2010 were unprofessional and demonstrated evidence of habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients. At the very least, Dr. Garcia's alcohol and substance abuse and lack of awareness that he is impaired while functioning as a physician in a hospital setting supports Dr. Cooper's opinions regarding Dr. Garcia's medical practices.

### **III. CONCLUSIONS OF LAW**

According to the language of 10 M.R.S. §8008, "The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose."

The Board, taking the above stated purpose into consideration, and based on the recited evidence and other evidence found in the record but not alluded to herein, and further on observations of the licensee's demeanor, concluded by the vote of 9-0, that Cesar Garcia, M.D. violated the following statutory provisions as detailed in paragraphs 1-18 above. Accordingly,

1. Pursuant to 32 M.R.S. §3282-A.(2)(F), Dr. Garcia is considered to have engaged in unprofessional conduct since he violated a standard of professional behavior that has been established in the practice for which the licensee is licensed.



2. Pursuant to 32 M.R.S. §3282-A.(B), Dr. Garcia engaged in habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients.

#### IV. SANCTIONS

The Board, based on the recited evidence and other evidence found in the record but not alluded to herein, and further on observations of the licensee's demeanor, voted 9-0 to issue this Interlocutory Decision and thereafter continue the matter until May 8, 2012. This will provide Dr. Garcia with the opportunity to comply with the following Board requirements which must be met for licensure renewal before the Board can be reassured that the public health and safety are not at risk.

The Board expressed several specific areas of concern that need to be addressed. First, Dr. Garcia requires counseling to aid him to cope effectively with the many stressors, including those in his medical practice, which negatively affect his life. Second, Dr. Garcia requires professional assistance to help him deal with alcohol and substance abuse issues. Third, Dr. Garcia requires professional therapy to assist him to avoid his denial of problems such as alcohol and substance abuse and deflection of criticism rather than taking personal responsibility. Dr. Garcia also demonstrated a lack of introspection and awareness that he may be impaired without realizing it.

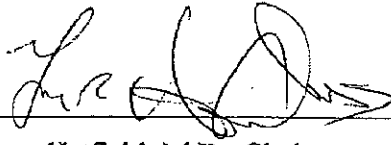
The Board concluded that Dr. Garcia will be best served by removing himself temporarily from the stress of his practice and entering and completing an intensive residential treatment program preapproved by Board Chairman Dr. Gary Hatfield or others who the Board may appoint, followed by intensive monitoring as ordered by the Maine Professional Health Program or similar organization.

Therefore, Dr. Garcia shall utilize the services of the Medical Professional Health Program to recommend an intensive residential treatment program of at least 30 days duration which will address his substance and alcohol abuse and psychological issues. The program shall be pre-approved by Dr. Hatfield. The program shall inform the Board of Dr. Garcia's progress regarding the above areas of concern and any others that the program deems significant. Furthermore, the Board reserves all rights regarding the decision whether to deny Dr. Garcia's application for

licensure renewal and/or to order additional conditions and sanctions should Dr. Garcia fail to satisfactorily complete the above program in a timely manner.

Wherefore, the final decisions regarding whether to discipline Dr. Garcia and regarding Dr. Garcia's application for renewal of his license to practice medicine are continued pending further Board action.<sup>3</sup>

Dated: 4/25/2012  
May 25, 2012

  
\_\_\_\_\_  
Gary Hatfield, M.D., Chairman  
Maine Board of Licensure in Medicine

V.

**APPEAL RIGHTS**

In the event that this Interlocutory Decision is appealable, pursuant to the provisions of 5 M.R.S. Sec. 11001, 11002, and 10 M.R.S. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.

<sup>3</sup>Dr. Garcia was present during the entire hearing and was informed of and discussed with the Board the above Board sanctions on April 10, 2012.

## MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Cesar Garcia, M.D. )  
 Licensure Disciplinary Action/Renewal ) **ORDER FOR CONTINUANCE**  
 Complaint No. CR10-476 )

Pursuant to the authority found in 32 M.R.S. Sec. 3282-A, *et seq.*, 5 M.R.S. Sec. 9051, *et seq.* and 10 M.R.S. Sec. 8001, *et seq.*, the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine at 1:00 p.m. on April 10, 2012. The purpose of the meeting was to conduct a consolidated adjudicatory hearing to decide the following two issues. First, whether Cesar Garcia, M.D. violated Board statutes and Rules as alleged in the Notice of Hearing which would subject him to disciplinary sanctions. Second, whether the Board would grant Dr. Garcia's request for renewal of his license to practice medicine in this state. The Board at the hearing concluded that Cesar Garcia, M.D. violated the following statutory provisions due primarily to facts found in paragraphs 1-18 of the April 25, 2012 Interlocutory Decision ratified by the Board on May 8, 2012.

1. Pursuant to 32 M.R.S. §3282-A.(2)(F), Dr. Garcia is considered to have engaged in unprofessional conduct since he violated a standard of professional behavior that has been established in the practice for which the licensee is licensed.
2. Pursuant to 32 M.R.S. §3282-A.(B), Dr. Garcia engaged in habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients.

The Board, based on the recited evidence in the Interlocutory Decision and other evidence found in the record but not alluded to therein, and further on observations of the licensee's demeanor, voted 9-0 to issue an Interlocutory Decision and thereafter continued the matter until May 8, 2012. The purpose of the continuance was to provide Dr. Garcia with the opportunity to comply with several Board requirements which must be met for licensure renewal before the Board could be reassured that the public health and safety are not at risk.

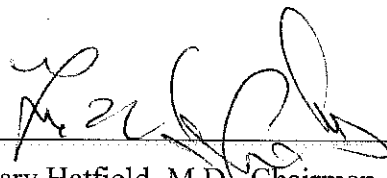
In part, the Board in the Interlocutory Decision, concluded that "Dr. Garcia would be best served by removing himself temporarily from the stress of his practice and entering and completing

an intensive residential treatment program. The program must be preapproved by Board Chairman Dr. Gary Hatfield or others who the Board may appoint, followed by intensive monitoring as ordered by the Maine Professional Health Program or similar organization.”

Dr. Garcia, through his attorney, informed the Board on May 4, 2012 that he has been accepted at the Decision Point Center in Prescott, Arizona and will shortly be entering the program. Dr. Hatfield pre-approved that provider on May 5, 2012 with the following conditions. First, Dr. Garcia and the Decision Point Center agree to waive any provisions regarding confidentiality as they may apply to the Board. Second, Dr. Garcia shall provide at the Board’s request releases for any and all records regarding his stay at the Center. Third, post-treatment monitoring reports shall be submitted by a provider at the Board’s request. In all other respects, the Interlocutory Decision remains in full force and effect.

Wherefore, the final decisions regarding whether to discipline Dr. Garcia and regarding Dr. Garcia’s application for renewal of his license to practice medicine are continued pending further Board action at the next Board meeting on June 12, 2012 or such other date as the Board deems reasonable considering the circumstances.

Dated: May 8, 2012

  
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Gary Hatfield, M.D., Chairman  
Maine Board of Licensure in Medicine

### **APPEAL RIGHTS**

In the event that this Order regarding the continuance is appealable, pursuant to the provisions of 5 M.R.S. Sec. 11001, 11002, and 10 M.R.S. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail,

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Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.

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